

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 3:18-cr-00144
)	Chief Judge Waverly D. Crenshaw
MARK BRYANT)	

**RESPONSE OF DEFENDANT MARK BRYANT
TO GOVERNMENT'S MOTION TO SET RE-TRIAL**

COMES NOW the Defendant, **Mark Bryant**, by and through his undersigned counsel, and hereby responds to the government's Motion to Set Trial. (Docket Entry 59):

1. Mr. Bryant has been charged by both sovereigns for allegations of excessive force arising out of Bryant's interaction with Cheatham County Jail Inmate Jordan Norris on November 5, 2016. Mr. Bryant was indicted by the State of Tennessee on September 5, 2017, in a case styled *State v. Mark M. Bryant*, Cheatham County Criminal Action No. 18375. The United States began its dual and successive prosecution of Mr. Bryant with the return of an indictment in the above-captioned case on June 20, 2018, some nine months after the return of the State indictment. (Docket Entry 3).

2. Mr. Bryant was first tried in this Court between February 4 and 8, 2019. (Docket Entries 49, 52, 53, 54, & 55). The jury was hopelessly deadlocked and the Court declared a mistrial. *Id.* at 58.

3. Mr. Bryant's State trial is set for Monday, July 15, 2019, in the Circuit Court for Cheatham County, Tennessee, 23rd Judicial District, Division 1, before Judge David Dee Wolfe and a jury. Defendant Bryant moves this Court to continue the re-trial of Mr. Bryant's federal case to a date *after* the conclusion of the State criminal trial. The federal government has had its day in

court and was unsuccessful; the State prosecution should now proceed unabated by the federal government's desire to try Mr. Bryant again before the State trial in a transparent attempt to avoid running afoul of its own *Dual and Successive Prosecution Policy* ("Petite Policy"), U.S. Attorneys' Manual 9-2.031. The so-called *Petite Policy* establishes guidelines for the exercise of discretion by appropriate officers of the Department of Justice in determining whether to bring a federal prosecution based on substantially the same act(s) or transaction(s) involved in a prior state or federal proceeding. *See Rinaldi v. United States*, 434 U.S. 22, 27 (1977); *Petite v. United States*, 361 U.S. 529 (1960). "The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions, *to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s)*, to promote efficient utilization of Department resources and to promote coordination and cooperation between federal and state prosecutors." USAM 9-2.031 (emphasis supplied).

WHEREFORE, based on the foregoing, Defendant Bryant respectfully requests that this Honorable Court enter an Order setting the trial in this Court on a date *after* the conclusion of the State prosecution of Mark Bryant in the Circuit Court for Cheatham County, Tennessee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via the Court's electronic filing system, if registered, or, if unregistered in the Court's system, it has been sent via facsimile and deposited in the United States Mail, postage prepaid, to:

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This 12th day of March, 2019.

S:/ Peter J. Strianse
PETER J. STRIANSE